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10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

10 July 1989

Dear Steve,

NORTHERN IRELAND INQUESTS

The Prime Minister was grateful for the Lord President's minute describing the outcome of the discussion in H Committee on Northern Ireland Inquests. She is content with the outcome and agrees that the proposed Order should be introduced in the Autumn.

I am copying this letter to the Private Secretaries to the Foreign and Commonwealth Secretary, the Lord Chancellor, the Home Secretary, the Defence Secretary, the Secretary of State for Northern Ireland, the Attorney General and Sir Robin Butler.

Yours sincerely,

C. D. POWELL

Steven Catling, Esq.
Lord President's Office



Ria Minister.

ms

Agreement to restore the status quo ante as you wished: but not to introduce an Order in Council until the autumn.

CAD
7/7

PRIME MINISTER

NORTHERN IRELAND INQUESTS

1 H Committee discussed yesterday whether an Order in Council should be introduced to reinstate the rule which, until it was overturned by the Northern Ireland Court of Appeal in December 1988, prevented a person being compelled to give evidence at an inquest in Northern Ireland if he was suspected of having caused the death of the person concerned. You will wish to know the outcome.

I should be grateful if colleagues will ensure that this minute is handled in their Departments on a strict need-to-know basis.

2 In December 1988, the Northern Ireland Court of Appeal declared ultra vires and void a long standing rule which prevented a person being compelled to give evidence at an inquest in Northern Ireland if he was suspected of having caused the death of the person concerned. From the Government's point of view, the most important aspect of this rule was that it prevented members of the security forces from being compelled to give evidence regarding a death in which they were alleged to have been involved. As a result of the judgement, however, the law on the matter in Northern Ireland is now essentially the same as that in England and Wales: a witness can be compelled to give evidence but can rely on his privilege not to answer any question which might incriminate him.

3 The Government has been given leave to appeal to the House of Lords against the decision of the Northern Ireland Court of Appeal. This course of action would be abandoned, however, if it were decided to legislate to restore the status quo ante.

4 I held an ad hoc meeting of colleagues on 25 January at which it was agreed that an Order in Council should be introduced to restore the status quo ante. The Order has taken some time to bring forward, however, and H Committee met yesterday to consider in the light of developments whether or not the original decision should be confirmed.

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5 The Committee decided that it should be. They recognised that restoring the status quo ante would open up a further difference between the law in Northern Ireland and that in the rest of the United Kingdom, that it would be strongly criticised in the

Province and elsewhere on human rights grounds, that an adverse reaction could be expected from the Dublin Government, and that Republican sympathizers would seek to exploit it for propaganda purposes. However, the Committee felt that the arguments for restoring the status quo ante in terms of protecting the safety and identity of security force personnel, of ensuring the security of sensitive operational information, and of depriving terrorists and their sympathizers of the propaganda opportunity which the present state of the law could afford, were overwhelming. No satisfactory safeguards short of reinstating the status quo ante were identified. It would still remain open to security force witnesses to appear in person at inquests should they wish to do so and provided that satisfactory assurances as to their safety, etc, could be obtained. But they should not be compelled to do so.

6 The Order could not be confined to security force witnesses since security was an "excepted" matter which would need to be dealt with by means of a Westminster Bill. The Order would therefore need to apply to all witnesses at inquests and it would not be possible to defend it solely in terms of the dangers facing security force personnel.

7 The Committee agreed that it would be right to introduce the proposed Order in advance of the hearing of the Government's appeal in the House of Lords, which is expected early next year. The presentational difficulties would be compounded if the House of Lords had upheld the view of the Northern Ireland Court of Appeal before action was taken. On the other hand, guided by the advice of Geoffrey Howe and Tom King, the Committee saw advantage in not introducing the proposed Order before the summer recess. To do so would throw an additional issue into the current political turmoil in Dublin with uncertain consequences, and, most important, would give Republican terrorists and their sympathizers in the North a propaganda gift in the midst of the marching season and of the run-up to the 20th anniversary of the

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deployment of British troops on the streets of Northern Ireland. The Committee agreed that the aim should be to introduce the proposed Order at a time of our own choosing in the Autumn. This would enable us to use the interim period to satisfy ourselves both that proceeding by Order cannot itself be challenged successfully on vires grounds and that the case for the proposed Order can be presented in convincing and legally satisfactory terms both in Parliament and elsewhere.

- 8 I am copying this minute to the Foreign Secretary, Lord Chancellor, Home Secretary, Defence Secretary, Northern Ireland Secretary, Attorney General and Sir Robin Butler.



JW

(Approved in draft by the Lord President
and signed in his absence)

7 July 1989